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MEMO ENDORSED

Premotion conference is waived. Defendant may file its motion by August 8. Plaintiff will have until September 4 to respond. Defendant will have until September 18 to reply. Defendant's attention is called to Local Rule 12.1
SO ORDERED.
USDJ 7-11-08

July 10, 2008

USDS SDNY
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VIA FACSIMILE (212) 805-7949

The Honorable P. Kevin Castel
U.S. District Court, Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Donald Faison v. Leonard St., LLC, 08 CV 02192(PKC)(DFE)

Honorable Sir:

We represent the Defendant in the above referenced action.

On June 2, 2008, in accordance with Your Honor's individual rules of practice, I submitted a letter seeking permission to make a 12(b)(6) motion to dismiss Plaintiff's Complaint for failure to state a claim upon which relief could be granted. In response to my letter, Your Honor granted Plaintiff leave to amend his Complaint until June 20, 2008 and granted the Defendant permission to proceed with this motion, to be submitted by July 11, if Plaintiff declined the opportunity to amend. Plaintiff had not amended and accordingly, we were in the process of completing said motion, with the intention of filing it tomorrow, when today, via priority mail, we were served with Plaintiff's Amended Complaint. Paragraph 4 of Plaintiff's Amended Complaint makes it clear that Plaintiff misunderstood Your Honor's Order and believed his Amended Complaint to be due by July 11.

Plaintiff's Amended Complaint no more states a claim upon which relief can be granted than his original Complaint. To Plaintiff's credit, his allegations have remained fairly constant and now are more finely tuned; yet in his now approximately two hundred, twenty-two (222) page Complaint, Plaintiff simply has not pled "enough facts to state a claim to relief [for harassment, retaliation or constructive discharge] that is plausible on its face." *Ruotolo v. City of New York*, 514 F.3d 184, 188 (2d Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007)).

Accordingly, Defendant wishes to proceed with its motion and wishes to have until August 8 to submit said motion.

FUGAZY & ROONEY LLP

Thank you for your attention to this matter.

Very truly yours,

Amanda M. Fugazy

cc: Donald Faison (via Regular Mail)